



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 31, 1993

Mr. Charles Karakashian, Jr.  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR93-110

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).<sup>1</sup> Your request was assigned ID# 18444.

The Texas Department of Public Safety (the "department") has received a request for information relating to the shooting of a Cockrell Hill police officer. Specifically, the requestor seeks:

all records relating to records, documents, writings, letters, memoranda or other written, printed, typed, or developed materials including physical evidence such as Officer Shahi's shirt, Gloch 9 millimeter handgun and ammunition that were collected in an investigation of the shooting of Officer Shahi on July 6, 1992.

---

<sup>1</sup>The Seventy-Third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

You have submitted to us for review the requested information and claim that former section 3(a)(3) of the Open Records Act (now found at section 552.103 of the Government Code) excepts it from required public disclosure.<sup>2</sup>

Previous open records decisions issued by this office resolve your request. Section 552.103(a) of the Government Code excepts from required public disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Section 552.103 applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). "Whether litigation is reasonably anticipated must be determined on a case-by-case basis." Open Records Decision No. 452 (1986) at 4.

The Texas Rangers, a subdivision of the department, has received notice of a claim in connection with the shooting of Officer Shahi pursuant to the Texas Tort Claims Act. Civ. Prac. & Rem. Code ch. 101. You have submitted the notice of claim for our review. On the basis of this notice of claim, we conclude that litigation may be reasonably anticipated. Having examined the documents submitted to us for review, we further conclude that the requested information relates to the anticipated litigation and may be withheld from required public disclosure under section 552.103.

In reaching this conclusion, however, we assume that the department has not released the requested information to the opposing party to the litigation since the time that he originally requested the records under the Open Records Act; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 3(a)(3). We also note that the applicability of section 552.103(a) ends once the


---

<sup>2</sup>You also claim that the requested physical objects, Officer Shahi's shirt, the Glock 9 millimeter handgun and ammunition, are not subject to the Open Records Act. We agree. While photographic negatives, *see* Open Records Decision No. 432 (1985), and sketches and drawings, *see* Open Records Decision No. 413 (1984), fall within the act, tangible objects do not. *See* Gov't Code § 552.002; *see also* Open Records Decision No. 581 (1990) (computer source codes not subject to the Open Records Act).

litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Rebecca L. Payne  
Section Chief  
Open Government Section

RLP/GCK/RWP/rho

Ref.: ID# 18444  
ID# 18460  
ID# 18564  
ID# 18668

Enclosures: Submitted documents

cc: Mr. Steven R. Shaver  
Shaver Boomer Sanford  
Wathen & Bethune, L.L.P.  
200 Hampton Court  
4311 Oak Lawn Avenue, LB 21  
Dallas, Texas 75219  
(w/o enclosures)